

# Oregon Property Buyer Advisory

## A CONSUMER INFORMATION PUBLICATION OF THE OREGON ASSOCIATION OF REALTORS®

A real estate licensee is vital to the home buying process and can provide a variety of services in locating property, negotiating the sale and advising the buyer. A real estate agent is generally not qualified to discover defects or evaluate the physical condition of property; however, a real estate agent can assist a buyer in finding qualified inspectors and provide the buyer with documents and other resources containing vital information about a prospective new home.

This Advisory is designed to assist home buyers in meeting their obligation to satisfy themselves as to the condition and desirability of property they are interested in purchasing. Common issues in real property transactions that home buyers often decide to investigate or verify are summarized in this Advisory. In addition to investigating or verifying these common issues, the buyer should tell the licensee with whom they are working about any special concerns or issues the buyer may have regarding the condition of the property or surrounding area. Such special concerns are not addressed in this Advisory.

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### PROPERTY CONDITION INSPECTION AND INVESTIGATION

#### Professional Home Inspections

OBTAINING A PROFESSIONAL HOME INSPECTION IS THE SINGLE MOST IMPORTANT THING A BUYER CAN DO FOR THEIR PROTECTION. A professional home inspection report will provide the buyer with detailed information about the home's physical condition, its systems and fixtures and usually note any potential future problems. The buyer should carefully review an inspector's proposal to determine the scope of the inspection. Some home inspectors may not inspect heating and cooling systems, the roof or other systems or components. A home inspection should be done by a home inspector or contractor licensed by the Oregon Construction Contractors Board (CCB). To inspect two or more components (i.e., roof, siding, structural), the home inspector must be certified and either be a licensed construction contractor or work for a licensed construction company. Also, a home inspector is not allowed to perform the repairs within a twelve-month period following the inspection. Buyers can review state home inspector requirements on line at:

<http://ccbed.ccb.state.or.us/WebPDF/CCB/Publications/HI%20consumer%20Protection%20notice.pdf>. Additional information about inspections and inspectors is available from the Oregon Association of Home Inspectors at: [www.oahi.org](http://www.oahi.org) or the InterNational Association of Certified Home Inspectors at [www.nachi.org](http://www.nachi.org). Inspection of property is beyond the scope of expertise of a real estate licensee, but real estate licensees can provide buyers with a list of local inspectors. Licensees ordinarily will not recommend a specific inspector. Before hiring an inspector, the buyer should check with the CCB to determine the inspector's current license status and whether there are any past or pending claims against the inspector. This can be done by visiting:

[https://ccbed.ccb.state.or.us/ccb\\_frames/consumer\\_info/ccb\\_index.htm](https://ccbed.ccb.state.or.us/ccb_frames/consumer_info/ccb_index.htm). Buyers should not rely upon reports done for others (previous buyers and/or sellers), because the report may not be accurate and buyers may have no recourse against an inspector they have not retained. Most residential sale contracts contain a clause that allows the buyer to withdraw from the agreement if a professional inspection they have done shows defects in the property. You will want to take advantage of this important right by obtaining your own professional home inspection report from a licensed professional inspector within the time frame specified in the sale contract. Unless otherwise provided for in the Sale Agreement, the cost of the inspection will not be refunded should you withdraw from the Agreement.

#### Pest and Dry Rot Inspection

Pest and dry rot inspections are done in many residential real estate transactions and may be required by the lender. A pest and dry rot inspection may or may not be included in a whole home inspection. If a pest and dry rot inspection is desired or required and the buyer is obtaining a whole home inspection, the buyer should verify that the inspection obtained covers pest and dry rot and the inspector is properly licensed. The license status of home inspectors can be checked at: [https://ccbed.ccb.state.or.us/ccb\\_frames/consumer\\_info/ccb\\_index.htm](https://ccbed.ccb.state.or.us/ccb_frames/consumer_info/ccb_index.htm). Pest control

operators who do inspections and treatment are licensed by the Oregon Department of Agriculture. Buyers can check on licensing of pest control operators and applicators by calling the Oregon Department of Agriculture at (503) 986-4635 or online at <http://oda.state.or.us/dbs/search.lasso#pesticide> Real estate licensees do not have the training or expertise to inspect property for pests or dry rot. Like any property condition report, buyers should not rely on the report of an inspector they did not hire. A pest and dry rot inspection is a limited inspection and is no substitute for a complete whole home inspection by a licensed home inspector.

### **Defective Products and Materials**

Some materials used in home construction are, or have been, subject to a recall, class action suit, settlement or litigation. These materials are typically, but not limited to, modern engineered construction materials used for siding, roofing, insulation or other building purposes. It is critical that a buyer carefully review any disclosures or representations of the seller regarding such materials. A real estate licensee may assist the buyer in that review, but inspection of property for defective products, systems, fixtures or materials is beyond the scope of expertise of a real estate licensee. The buyer, therefore, should make certain inspection for such materials is within the scope of any home inspection ordered by the buyer. Like any property condition report, buyers should not rely on the report of an inspector they did not hire.

Similarly, homes may contain products in their systems or fixtures that are, or have been, subject to a recall, class action suit, settlement or litigation. Plumbing, heating and electrical systems, among others, may contain such products. It is critical that a buyer carefully review any disclosures or representations of the seller regarding such products. The buyer should, therefore, make certain inspection for such products is within the scope of any home inspection ordered by the buyer. A real estate licensee can help the buyer find a suitable inspector.

### **Repairs and Remodels**

Buyers should look for signs of repairs or remodeling when viewing property. If repairs or remodeling have been done, the buyer will want to make certain the work was properly done. Buyers can ask the seller for any invoices or other documentation for the work but, as with other questions of property condition, there is no substitute for professional inspection. A real estate licensee can help the buyer assess the need for a building code compliance inspection but do not themselves have the training or expertise to evaluate building code compliance. Information about building permits can be found at: <http://www.permitsprotect.info/>, a service of the Department of Consumer & Business Services Building Codes Division. If building permits were required for work done on the property (such permits are typically required for structural changes, new additions, and new plumbing and electrical work), the buyer should check with the city or county building department to make sure the permits are in order. If permits were not properly obtained, the new property owner could be held responsible. Ask your agent for assistance or you can find the website for the county in which the property is located by visiting:

<http://www.aocweb.org/aoc/AboutOregonCounties/CountyLinks/tabid/79/Default.aspx>

Websites for cities can be found at:

<http://www.orcities.org/CityResources/MapofOregonCities/tabid/848/language/en-US/Default.aspx>. If repairs or remodels have been completed very recently, the buyer should take steps to determine if there is any possibility of construction liens being filed against the property after the sale has closed. This can be done by the buyer raising the issue with their title insurance provider.

If any repairs are being required during the transaction, the buyer should insure a licensed construction contractor is doing the repairs. After the repairs have been done, the buyer should consider having a re-inspection done to assure the repairs were done properly.

### **Homebuyer Protection Act**

The Homebuyer Protection Act of 2003 requires sellers of certain new and recently remodeled or renovated residential property to provide buyers with protection from unrecorded construction liens. Information about construction liens is available

at: <https://ccbed.ccb.state.or.us/WebPDF/CCB/Publications/constructionlienspamlet.pdf> If the buyer is entitled to protection under the Homebuyer Protection Act, the seller must choose one of five statutory protections and provide you with a Notice of Compliance form indicating the protection chosen. A copy of the Notice form and explanation of the Act is available at: <https://ccbed.ccb.state.or.us/WebPDF/CCB/Publications/HPAform.pdf>

Real estate licensees are not trained or experienced in construction lien law. If a Notice of Compliance form is part of the transaction, or either party is uncertain about their rights or obligations under the Act, they should seek the advice of an attorney. Real estate licensees cannot interpret legal documents or give legal advice.

### **Sewer and Septic Systems**

Whether the property is connected to a city sewer, septic system or other on-site wastewater treatment system is important information. Even if the MLS data sheet or Seller's Property Disclosure Statement indicate that the home is connected to the city sewer, the buyer should have their home inspector, or a licensed plumber, verify the connection and its condition. Real estate licensees are not licensed to do plumbing or septic inspections. If the property has a septic system or other on-site wastewater treatment system, the system should be inspected by a licensed septic system installer or other on-site wastewater treatment system professional hired by the buyer. Information about on-site wastewater treatment systems, and licensed installers and pumpers, can be found on the website for the Oregon Department of Environmental Quality (DEQ) at: <http://www.deq.state.or.us/wq/onsite/onsite.htm>. Buyers should check with the appropriate county department for specific information on a particular property.

### **Wells**

If domestic water for the property is supplied by a private well, the seller is required by state law to test the well for total coliform bacteria, nitrates and arsenic. The seller must report the results of the tests to the Oregon Health Department and the buyer. Buyers may also want to have the well tested for other potential contaminants. Buyers should verify that the seller uses proper procedures when having the well tested. More information on this state law requirement can be found at <http://public.health.oregon.gov/HealthyEnvironments/DrinkingWater/Monitoring/Pages/dwtfaq.aspx>. State law also requires that all private wells not already registered with the state be registered at the time the property is transferred. Real estate forms in use in Oregon often delegate to the buyer the responsibility for registering the well. A useful guide to the well identification program can be found at [http://www.oregon.gov/OWRD/PUBS/docs/well\\_id\\_guide.pdf](http://www.oregon.gov/OWRD/PUBS/docs/well_id_guide.pdf). For information on the state well registration program, visit: [http://egov.oregon.gov/OWRD/GW/well\\_id.shtml](http://egov.oregon.gov/OWRD/GW/well_id.shtml).

**Well Flow Tests:** If domestic water is supplied by a private well, the buyer should verify to the extent possible whether the well provides adequate water for domestic needs. It is strongly recommended that a well flow test be conducted prior to the purchase of any property that depends on a well for domestic water. Careful attention should be paid to any disclosures or representations by the seller. Buyers should review all available well records. More information on well logs is available at: [http://apps.wrd.state.or.us/apps/gw/well\\_log/well\\_log\\_faq.aspx](http://apps.wrd.state.or.us/apps/gw/well_log/well_log_faq.aspx). To access the well log database online visit: [http://apps.wrd.state.or.us/apps/gw/well\\_log](http://apps.wrd.state.or.us/apps/gw/well_log). Buyers are advised to have well flow tested by a professional. While real estate licensees are not trained and do not have the expertise to test wells, they may be able to direct you to the appropriate well professionals. Even when wells are inspected and tested, it is impossible to guarantee a continued supply of water. Catastrophic events can and do occur that can change the well quality virtually overnight. Other events, such as development and drought, can affect the quality of an aquifer over time. Any test of a well is merely a snapshot in time and is not an indication of a well's performance in the future. Any kind of well report should be viewed in this light. **PROFESSIONAL INSPECTION, WELL LOG REVIEW AND FLOW TESTS ARE ABSOLUTELY CRITICAL IN DETERMINING THE CONDITION OF A PRIVATE WELL.**

### **Underground Oil Storage Tanks**

Buyers should be aware of potential problems associated with underground oil storage tanks. Although home heating oil tanks are not regulated, such tanks can cause serious problems if they have leaked oil. Advice on home heating oil tanks and the problems associated with them can be found at:

<http://www.deq.state.or.us/lq/tanks/hot/homeowners.htm>

A buyer who knows or suspects that property has an underground storage tank should take appropriate steps to protect his own interests, including seeking information from the Department of Environmental Quality (DEQ) and, if necessary, consulting with an environmental hazards specialist or attorney. **BUYERS ARE ADVISED TO HIRE APPROPRIATELY TRAINED ENVIRONMENTAL PROFESSIONALS TO INSPECT THE PROPERTY IF AN UNDERGROUND OIL STORAGE TANK IS FOUND OR SUSPECTED.** Oil storage tank inspection,

decommissioning and cleanup requires a special license from DEQ. A list of licensed providers can be found at <http://www.deq.state.or.us/lq/pubs/docs/tanks/hot/LicensedServiceProviders.pdf> or ask your real estate licensee for assistance in finding the proper professional.

### **Environmental Hazards**

Buyers should carefully review the Seller's Property Disclosure Statement and any inspection reports available to determine if any of a number of potential environmental hazards may require further investigation. Environmental hazards include everything from expansive soils to landslides to forest fires, tsunamis, floods and earthquakes. Environmental hazards can also include indoor air quality (e.g., radon or carbon monoxide) and hazardous materials, like asbestos. Buyers concerned about external environmental hazards should check with the county in which the property is located. Oregon counties can be located at:

<http://www.aocweb.org/aoc/AboutOregonCounties/CountyLinks/tabid/79/Default.aspx>

Flood plain maps and information are available from the Federal Emergency Management Agency (FEMA) at: <http://www.fema.gov/business/nfip/mscjump.aspx>. The Environmental Protection Agency (EPA) provides a great deal of information about indoor hazards on its website at: [www.epa.gov/iaq/iaqinfo.html](http://www.epa.gov/iaq/iaqinfo.html). Superfund sites are areas that have been listed by the federal government as contaminated. A wealth of information on superfund sites, including their locations, is available by visiting the EPA's website at:

<http://www.epa.gov/superfund/sites/>. Information on Oregon superfund sites can be obtained from the Oregon Health Authority's website at:

<http://public.health.oregon.gov/HealthyEnvironments/TrackingAssessment/EnvironmentalHealthAssessment/Pages/sites.aspx>. Real estate licensees are not trained, and do not have the expertise, to discover and evaluate environmental hazards. Buyers, therefore, are advised to hire appropriately trained environmental professionals to inspect the property and its systems or fixtures for environmental hazards.

Wildfire is a concern in some areas of Oregon. Information about the risk of wildfire is available from the Oregon Department of Forestry at: <http://www.oregon.gov/ODF/FIRE/fire.shtml>. Some rural property is subject to special rules under the State's "Forestland-Urban Interface Classification." Owners of property within the classification should have a "Property Evaluation and Self-Certification" on file with the Department of Forestry. Forestland-Urban Interface status must be disclosed on the Seller's Property Disclosure form. Information about the Forestland-Urban Interface and on the evaluation and certification program is available at: <http://www.oregon.gov/ODF/FIRE/SB360/sb360.shtml>. Real estate licensees do not have the expertise to advise buyers on fire protection requirements but can often direct buyers to the appropriate professionals.

### **Woodstoves**

DEQ has developed a statewide woodstove program to promote the use of cleaner-burning woodstoves and to help homeowners to burn wood more efficiently and with less pollution. Under Oregon law, any uncertified woodstove must be removed from the property when a home is sold. It is the seller's responsibility, unless the buyer and seller agree otherwise, to remove and destroy any uncertified woodstove when a property is sold and to notify DEQ. If the buyer assumes responsibility for the removal of the uncertified stove, the stove must be removed and destroyed, and DEQ notified, within 30 days of the closing date on the home. Non-certified woodstoves (including fireplace inserts) are older models (mostly pre-1986) that have not been certified by the DEQ or the federal Environmental Protection Agency to meet cleaner-burning smoke emission standards. For more information on woodstoves and the removal requirements, visit: <http://www.deq.state.or.us/aaq/burning/woodstoves/heatSmart.htm>

Buyers should contact their insurer early in the home buying process to determine what, if any, effect, a fireplace or woodstove may have on the availability or cost of fire insurance. Inspection of fireplaces and woodstoves requires special training and expertise. Although a real estate licensee may be able to help you find a local woodstove professional, they cannot themselves inspect or evaluate a woodstove.

### **Mold**

Molds are one of a variety of biological contaminants which can be present in human structures, including in residential housing. Mildew is perhaps the most common and best known of the molds. Less well known, and far less common, are certain molds identified as possible contributors to illness, particularly in people with allergies. Such cases usually involve property with defective siding, poor construction, water penetration problems,

improper ventilation or leaking plumbing. In a few cases, these problems have led to the growth of molds which caused medical conditions in some people. Buyers, if concerned about potentially harmful molds, should arrange for inspection by a qualified professional. Information on moisture intrusion and mold problems associated with human structures can be found at: <http://www.epa.gov/mold/index.html>. Inspection, discovery and evaluation of specific water intrusion or mold problems requires extremely specialized training and is well beyond the scope of a real estate licensee's expertise. Buyers are, therefore, advised to hire appropriately trained professionals to inspect the property if the buyer is concerned about the possibility of harmful molds.

### **Smoke Alarms**

In Oregon, no person may sell a dwelling unless there is installed in the dwelling unit an approved smoke detector or smoke alarm installed in accordance with the rules of the State Fire Marshall. Because of this state law requirement, most residential real estate sale forms contain a representation by the seller that, at the earlier of possession or closing date, the dwelling will have an operating smoke detector as required by law. In Oregon, battery-powered ionization smoke alarms (the most common type) must have a 10-year battery and a "hush" mechanism which allows a person to temporarily disengage the alarm. All dwellings must have the proper type, number and placement of alarms as required by the building codes at the time the dwelling was constructed but not less than one alarm adjacent to each sleeping area and at least one alarm on each level of the dwelling. (Additional rules apply to rented property.) For information about smoke alarm and detector requirements in Oregon, please visit the State Fire Marshall's site: [http://arcweb.sos.state.or.us/pages/rules/oars\\_800/oar\\_837/837\\_045.html](http://arcweb.sos.state.or.us/pages/rules/oars_800/oar_837/837_045.html). Real estate licensees are not trained in building code compliance, therefore, if there is doubt about whether a smoke alarm or detector system complies with building and fire code requirements, a licensed home inspector, or the home alarm or detector company that installed the system, should be able assist you. Your real estate agent may be able to assist you in finding the right code compliance professional.

### **Carbon Monoxide Alarms**

Effective April, 2011 any person transferring a one or two family dwelling or multifamily housing (additional rules apply to rental property) that contains a carbon monoxide source (heater, fireplace, appliance, or cooking stove that uses coal, kerosene, petroleum products, wood or other fossil fuels that emit carbon monoxide as a by-product of combustion, or has an attached garage with an opening that communicates directly with a living space) must provide a properly functioning carbon monoxide alarm(s) installed at the location(s) that provide carbon monoxide detection for all sleeping areas of the dwelling or housing. The alarm(s) must be installed in accordance with the rules of the State Fire Marshall and in accordance with any applicable requirements of the state building code. Information about carbon monoxide alarms and detector requirements in Oregon can be found on the State Fire Marshal's web site at: [http://www.oregon.gov/OSP/SFM/CommEd\\_CO\\_Program.shtml](http://www.oregon.gov/OSP/SFM/CommEd_CO_Program.shtml)

A purchaser or transferee who is aggrieved by a violation of this requirement may bring an individual action in an appropriate court to recover the greater of actual damages or \$250 per residential unit (plus fees, including attorney's fees). Violation of this requirement does not invalidate any sale or transfer of possession. Actions for violations must be brought within one (1) year of the sale or transfer of possession.

Because of this state law requirement, most residential real estate forms will contain a representation that, at the earlier of possession or closing date, the dwelling will have an operating carbon monoxide detector as required by law. Sellers should anticipate the carbon monoxide alarm requirement as it is also included on the new seller's property disclosure form.

Real estate licensees are not trained in building code or fire code compliance. If there is any doubt about whether a carbon monoxide alarm complies with the building or fire code requirements, a licensed home inspector, or the alarm company should be contacted.

### **Deaths, Crimes and External Conditions**

In Oregon, certain social conditions that may be of concern to buyers are considered not to be "material" by state law. Oregon Revised Statutes 93.275. Ordinarily, "material facts" must be disclosed by the seller or the seller's agent. Because state law declares certain facts that may be important to a buyer to be not material, buyers cannot rely on the seller disclosing this kind of information. Buyers should undertake their own investigation if concerned that the property or a neighboring property has been the site of a death, crime, political activity, religious activity, or

any other act or occurrence that does not adversely affect the physical condition of, or title to, real property, including that a convicted sex offender resides in the area. Concerned buyers can contact their local police for more information. Websites for Oregon counties can be found at: <http://www.aocweb.org/aoc/AboutOregonCounties/CountyLinks/tabid/79/Default.aspx>. Websites for cities can be found at:

<http://www.orcities.org/CityResources/LOCCityDirectory/tabid/845/ctl/ShortcutResults/mid/13270/language/en-US/Default.aspx?view=4>. Some large cities (e.g., Portland) publish crime maps (e.g., [www.portlandmaps.com](http://www.portlandmaps.com)) on their website. Information about registered sex offenders can be found by visiting <http://egov.oregon.gov/DOC/faqs.shtml>. Buyers concerned that neighborhood properties may have been used for illegal drug manufacture can visit <http://www.oregonbcd.org/druglabs/druglabs.html>, the website of the Building Codes Division, for more information. Information on Oregon's Drug Lab Clean Up Program and meth labs can be found at: <http://public.health.oregon.gov/HealthyEnvironments/EnvironmentalExposures/HazardousSites/ClandestineDrugsLabs/Pages/index.aspx>. Under Oregon law, neither the seller nor their agent is allowed to disclose that an owner or occupant of the real property has or had human immunodeficiency virus or acquired immune deficiency syndrome.

## Neighborhoods

Neighborhoods change over time so a buyer cannot expect the area surrounding their home to stay as it is. Buyers concerned about potential development in the surrounding area should check with governmental authorities to determine if any large scale building projects are scheduled for the area. Building permits, zoning applications and other planning actions are a matter of public record. In Oregon, local governments must develop comprehensive plans that guide development over long periods of time. These plans may include "overlay zones" that can have a significant effect upon development. If concerned about development, buyers should check with local government planning departments. Information about planning departments can be found on the county or city website: <http://www.aocweb.org/aoc/AboutOregonCounties/CountyLinks/tabid/79/Default.aspx> Or <http://orcities.org/CityResources/MapofOregonCities/tabid/848/language/en-US/Default.aspx> For information on state road building projects, check with the Oregon Department of Transportation at: <http://www.oregon.gov/ODOT/HighwayRegions.shtml>. Location within a school district can be an important attribute of a neighborhood. School boundaries, however, are subject to change. If location within a particular school district is material to the purchase of real property, the buyer should investigate the boundaries and the likelihood of change by contacting the school district directly.

Oregon law provides a "just compensation" right for some Oregon property owners if a public entity enacts or enforces a land use regulation that restricts the use of property and has the effect of reducing the value of the property. The law allows, but does not require, governing bodies to modify, remove, or not apply land use regulations in lieu of paying compensation. Property that has been in single ownership or held in a family over a long period of time may have more development potential and, therefore, value than has a neighboring property purchased more recently. At the same time, some property may be less valuable because of the potential for unzoned, property specific uses on neighboring property. Real estate licensees are not trained to predict the contingent and uncertain potential effects of complex laws like Oregon compensation laws. Clients who believe their decision to sell or purchase Oregon real estate may be affected by Oregon's property compensation laws are advised to seek the counsel of appraisers, attorneys or other land use professionals.

## Short Sale Properties

A short sale is any sale where the purchase price will not result in sufficient proceeds to pay off the mortgage, or other liens, and clear the title. Short sales are typically made using a short sale addendum that makes the transaction contingent upon the seller obtaining the consent from their creditors permitting a reduction in the closing costs sufficient to close the transaction for the purchase price. Because the transaction is contingent upon the consent of third parties, short sales often fail. Buyers should understand and plan for the resulting uncertainty. Contract deadlines and termination provisions must be carefully considered in a short sale. Because the transaction is contingent on the consent of one of more third parties, sellers can, and often do, continue to market the property and seek better offers. Creditors will often demand changes in the terms of the sale agreement as a condition of giving their consent. Buyers should be prepared to deal with the additional uncertainty created by the potential for multiple

offers and third party demands. Real estate licensees can give buyers important marketing, business and negotiating advice and information and can assist in preparation of the sale agreement but only pursuant to the client's instructions. Real estate licensees are not attorneys and are prohibited by law from giving legal advice.

### **Real Estate Owned Properties**

When a lender forecloses on a property, obtains title in lieu of foreclosure or otherwise obtains title to real property as a result of a mortgage or lien, the property becomes what is called "Real Estate Owned" or REO property. Lenders typically sell REO property using the same listing and marketing techniques as ordinary home owners. REO property, however, is almost always sold using forms and procedures developed by the lender. Such forms and procedures can significantly affect a buyer's rights and obligations in the transaction. For instance, may REO forms delay formation of the contract until right before closing, or otherwise reserve to the seller the right to cancel the contract. Buyers should understand and plan for the resulting uncertainty. REO forms typically contain very detailed clauses that shift responsibility for the condition of the property to the buyer and make it difficult or impossible for the buyer to sue the seller if a defect is discovered after closing. Real estate licensees can give buyers important marketing, business and negotiating advice and information and can assist in preparation of the sale agreement but only pursuant to the client's instructions. Real estate licensees are not attorneys and are prohibited by law from giving legal advice.

### **Radon**

Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Oregon. Additional information regarding radon and radon testing may be obtained from your county health department, or from the Oregon Department of Human Services at: <http://oregon.gov/DHS/ph/rps/radon/index.shtml>

Real estate licensees do not have the expertise to advise buyers on radon testing requirements but can often direct buyers to the appropriate professionals.

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## DOCUMENT INSPECTION AND INVESTIGATION

### Information Generally

Information from third parties contained in the many documents associated with a real property transaction is not independently verified by real estate licensees. It is the responsibility of the buyer to read the documents provided and ask questions if uncertain or concerned. Interpretation of many real property transaction documents involves the practice of law and is, therefore, beyond the scope of a real estate licensee's expertise. BUYERS UNCERTAIN ABOUT THE LEGAL EFFECT OF DOCUMENTS SHOULD CONSULT AN ATTORNEY.

### MLS Information

Most properties marketed for sale by real estate licensees are listed in a Multiple Listing Service (MLS). Information about the listing, provided to the MLS by the listing broker, is made available to all subscribing members of the MLS. This information is typically contained in what is called an MLS "printout" or "data sheet." Most of the information contained in an MLS data sheet or printout is obtained from the seller or third-parties like the county assessor's office or other governmental entity. MLS data may be incomplete, an approximation or otherwise inaccurate. Personal property cited on the MLS data sheet should be included in the purchase agreement if the buyer wishes to have the personal property included in the sale. BUYERS SHOULD NOT RELY ON MLS-PROVIDED INFORMATION IF THAT INFORMATION IS CONSIDERED IMPORTANT UNLESS THE BUYER VERIFIES THE INFORMATION.

### Seller's Property Disclosure Statement

In most cases, residential property sellers in Oregon must provide a Seller's Property Disclosure Statement to each residential buyer who makes a written offer. The form used by the seller is mandated by state law. The seller's representations regarding the property are based upon the seller's actual knowledge at the time the disclosure statement is made and are not the representations of any financial institution that may have made or may make a loan pertaining to the property, or that may have a security interest in the property, or any real estate licensee engaged by the seller or buyer. Licensees are not responsible for misrepresentations by the seller unless they know of the misrepresentation and fail to disclose it. A buyer should carefully review the seller disclosures and verify, or ask their licensee to verify, any statements of concern. REVIEW OF THE SELLER'S PROPERTY DISCLOSURE STATEMENT IS NO SUBSTITUTE FOR PROFESSIONAL INSPECTIONS.

### Real Estate Sale Form (Sale Agreement)

A contract for the sale of real property must be in writing to be enforceable in an Oregon court. A VERBAL OFFER OR ACCEPTANCE SHOULD NOT BE MADE OR RELIED UPON. Contracts for the sale of property are often called "earnest money" or "sale" agreements. They are legally binding contracts. Buyers and sellers should seek competent legal advice before signing any contract they do not fully understand. Sale agreements usually include provisions concerning who will hold the earnest money and under what conditions it may be refunded to the buyer or forfeited to the seller. Both buyers and sellers should carefully review these provisions. The amount of earnest money pledged and the conditions under which it may be refunded or forfeited are important matters that should be carefully negotiated between the buyer and the seller.

Most sale agreements are written using a standard form. In Oregon, most licensees use a form developed specifically for Oregon real property transactions. Many of these forms contain dispute resolution provisions that require mediation or arbitration of disputes. Arbitration and mediation clauses can affect legal rights, including the right to a judicial determination of a claim and the right to appeal.

BUYERS AND SELLERS ARE RESPONSIBLE FOR SELECTING THE TERMS AND CONDITIONS OF THEIR AGREEMENT. REAL ESTATE LICENSEES CAN GIVE BUYERS IMPORTANT MARKETING, BUSINESS AND NEGOTIATING ADVICE AND INFORMATION AND CAN ASSIST IN PREPARATION OF THE SALE AGREEMENT BUT ONLY PURSUANT TO THE CLIENT'S INSTRUCTIONS. REAL ESTATE LICENSEES ARE NOT ATTORNEYS AND ARE PROHIBITED BY LAW FROM GIVING LEGAL ADVICE. To obtain a referral for a real estate attorney, visit the Oregon State Bar at <http://www.osbar.org/public/legalhelp.html> or contact by phone at 503-684-3763 (Portland metro) or 800-452-7636 (greater Oregon).

## **Financing**

The buyer's ability to finance the property is an important contingency in most residential transactions. Buyers must act in good faith and use best efforts to obtain a loan if the sale is contingent upon obtaining a loan. Buyers often seek pre-approval from a lender prior to writing an offer. A pre-approval letter should state that the lender has reviewed the buyer's credit report, income requirement and cash to close and pre-approves the buyer for the loan, subject to an acceptable appraisal of the property. The appraiser will normally work for the lender, not the buyer. To check the status of an appraiser, visit the Appraiser Certification and Licensure Board:

[http://oregonaclb.org/aclb\\_prod/index.php](http://oregonaclb.org/aclb_prod/index.php) Once the appraisal has been received, the underwriter authorizes final loan approval. Only when the underwriting process is completed will an actual loan be secured. The entire financing process normally takes approximately 30-45 days. If the seller is asked to finance any part of the transaction, the buyer's financial status will become material to the transaction. Any material defect in the buyer's financial status must be fully disclosed to the seller. Because of the risks involved for the seller, the buyer should anticipate that the seller will fully investigate the buyer's credit worthiness prior to agreeing to carry financing for the buyer. A real estate licensee cannot hide material information from any party to a real estate transaction and should not be asked to do so by the buyer or seller.

## **Title Report and Commitment**

The title report, or commitment to insure, produced by a title insurance company contains important information that must be reviewed by the buyer. In particular, the report will list certain "exceptions" to the policy the company will issue. Buyers should request copies of any documents mentioned in the report that are not understood or raise concerns about the state of the title. General information about title issues can be found at:

<http://www.titlelawannotated.com>. Questions about the title report and associated documents can be directed to the title or escrow officer issuing the report or to the buyer's attorney or surveyor. Review of title reports for legal deficiencies involves the practice of law.

## **Homeowners' Insurance**

The insurance claims history for a home may affect the cost of homeowners' insurance, or even its insurability. Most insurance companies use a database service called the Comprehensive Loss Underwriting Exchange (CLUE) to track claims made. Depending on the content of the CLUE report, and the insurance company's policy, home insurance may prove more difficult to get than expected. The buyer's claims history and credit report may also be used to determine insurability. Insurers have used CLUE reports and other information, coupled with termination provisions in the policy, to cancel coverage after closing. IT IS CRITICAL THAT BUYERS ARRANGE FOR HOMEOWNERS' INSURANCE EARLY IN THE PROCESS OF PURCHASING PROPERTY RATHER THAN WAITING UNTIL CLOSING TO GET INSURANCE. If difficulty is experienced in obtaining the insurance, the buyer can ask the seller to furnish them with a copy of the CLUE report on the property. Homeowners can obtain a copy of the report for their property online at:

[https://personalreports.lexisnexis.com/fact\\_act\\_claims\\_bundle/landing.jsp](https://personalreports.lexisnexis.com/fact_act_claims_bundle/landing.jsp). Buyers may want to talk to the licensee they are working with about whether obtaining suitable homeowners' insurance should be made a contingency of the sale. More information on homeowners insurance in Oregon can be found at:

<http://www.insuranceoregon.org/home/>.

## **Flood Insurance Disclosure**

Your mortgage lender [may] require you to purchase flood insurance in connection with your purchase of this property. The National Flood Insurance Program provides for the availability of flood insurance but also establishes flood insurance policy premiums based on the risk of flooding in the area where properties are located. Due to recent amendments to federal law governing the NFIP those premiums are increasing, and in some cases will rise by a substantial amount over the premiums previously charged for flood insurance for the property. As a result, you should not rely on the premiums paid for flood insurance on this property previously as an indication of the premiums that will apply after you complete your purchase. In considering your purchase of this property you should consult with one or more carriers of flood insurance for a better understanding of flood insurance coverage, the premiums that are likely to be required to purchase such insurance and any available information about how those premiums may increase in the future. Real Estate licensees do not have the expertise to assess flood potential and probable insurance premiums. For more information & flood plain maps please

visit: <http://www.fema.gov/national-flood-insurance-program/map-service-center>.

### **Home Warranties**

A home warranty is an insurance contract. Home warranties for existing homes are common in today's real estate market. The warranty generally covers the repair and replacement of equipment and appliances such as dishwashers, plumbing systems, electrical systems, and so on. Optional coverage may be available at additional costs for pools, built-in spa equipment, well pumps and other systems. Coverage and price vary considerably among warranty companies. A home warranty can be included as a term of a purchase agreement. Buyers should discuss home warranties with their agent prior to purchasing a home. Your agent can provide you with information on companies offering home warranties for purchase.

### **Square Footage and Acreage**

The square footage of structures and acreage data found in MLS printouts, assessor records and the like are usually just estimates and should not be relied upon. Many Oregon properties have not been surveyed and their exact boundaries are not known. If square footage or land size is a material consideration in a purchase, all structures and land should be measured by the buyer or a licensed surveyor prior to entering into a sale agreement, or should be made an express contingency of the agreement. You can find a licensed surveyor in your area by visiting their website at: <http://www.osbeels.org/>.

### **Homeowners' Association Documents, Covenants, Conditions and Restrictions**

Covenants, conditions and restrictions, called "CC&Rs," are formally recorded private limitations on the right to use real property. Often, but not always, CC&Rs are enforced by a homeowners' association. Review of the CC&Rs is typically part of a real estate sale. Although real estate licensees are familiar with common CC&R provisions, determining the legal effect of specific provisions is considered the practice of law in Oregon and, therefore, beyond the expertise of a real estate licensee. If the subdivision in which the property is located is governed by a homeowners' association, the CC&Rs may be very restrictive. Homeowners' associations are often governed by their own articles of incorporation, bylaws, rules and regulations. Homeowners' association rules and regulations can significantly impact a buyer's plans for the property the buyer wants to purchase. Planned communities and condominiums are very likely to have detailed homeowners' association governing documents, mandatory fees and ongoing homeowner obligations. Governing documents, fees and homeowner obligations should be reviewed by the buyer during the transaction. If you have questions about CC&Rs or your legal rights and remedies under homeowners' association governing documents, you should have your attorney review the documents for you. A real estate licensee is prohibited by law from giving legal advice. For more information on homeowners' associations and CC&Rs, visit <http://www.realtor.com/BASICS/condos/ccr.asp>.

### **Lead-Based Paint Disclosure Form**

Residential property built before 1978 (called "target" housing) is subject to the Residential Lead-Based Paint Disclosure Program administered by the Environmental Protection Agency (EPA) and the Department of Housing and Urban Development (HUD). The Act requires sellers of target housing to provide the buyer with a lead-based paint disclosure and the pamphlet entitled Protect Your Family From Lead in Your Home. Information about the requirements and samples of the forms can be found at: <http://www.hud.gov/offices/lead/healthyhomes/lead.cfm>.

If you make an offer on a home built before 1978 and do not receive the disclosure and pamphlet, you should ask your real estate licensee about lead-based paint disclosures. For more information and to locate companies certified and licensed to conduct lead-based paint testing or perform abatement, visit <http://public.health.oregon.gov/HealthyEnvironments/HealthyNeighborhoods/HealthyHomes/LeadPoisoning/InspectionAbatementProfessionals/Pages/certlist.aspx>.

If you are planning renovation, repair, or painting (RRP) on a home built before 1978, you should be aware of EPA rules that require such work be done by certified contractors who must follow EPA work guidelines. This may complicate or add expense to such projects. RRP rules in Oregon are jointly administered and enforced by the Construction Contractors Board (CCB) & the Department of Human Services (DHS). For information visit: <http://public.health.oregon.gov/HealthyEnvironments/WorkplaceHealth/Work-RelatedLeadPoisoning/Pages/RRP.aspx>.

Homeowners who do their own work in their own home are exempt from RRP rules. EPA does, however, urge homeowners to read EPA's *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers, and Schools*. Homeowners can also call the National Lead Information Center at 1-800-424-LEAD (5323) for more information or visit EPA's website at: <http://www.epa.gov/lead/index.html>

### **Historic Property**

It is important for the buyer to determine whether a property is considered a historic property and therefore subject to a special assessment providing for tax benefits to the owner of the property. These properties are listed on the National Register of Historic Places. For more information visit <http://www.oregonheritage.org/OPRD/HCD/NATREG/index.shtml>. It is important for buyers to understand how to retain the tax benefits afforded to the property.

The newest version of the Historic Property Tax Benefit Program not only reduces the benefit from 15 to 10 years but provides increased accountability on owners. Additionally, the law allows for a second 10-year renewal of the benefit so long as the local government has not passed a resolution prohibiting the renewal. The lack of a renewal of the special assessment or failing to comply with the requirements and deadlines contained in the law could result in the loss of the special assessment and a substantial increase in the new owner's property taxes as well as potential fines. More information on the Historic Property Tax benefit Program including statutes, rules and applications can be found here: [http://www.oregon.gov/OPRD/HCD/SHPO/tax\\_assessment.shtml](http://www.oregon.gov/OPRD/HCD/SHPO/tax_assessment.shtml).

Buyers should carefully review closing documents and inquire into all requirements of the Historic Property Tax Benefit Plan when presented with a Historic Property Addendum. Real estate licensees are not trained or licensed to provide tax advice.

### **Property Taxes**

"Real property in Oregon is taxed under a complicated formula that involves more than just valuation of the property. Some properties (typically, but not exclusively, farm or forest) are specially assessed and taxes deferred. The sale of such property can result in changes in the tax status and result in the levy of additional taxes. If a new home is being constructed and the closing precedes completion of the home, the full taxes that will be due upon completion may not be reflected in the closing statement. Buyer's should carefully review closing documents and property taxes and seek the advice of a tax professional if concerned about the valuation, the taxes assessed or potential changes in the tax status. Real estate licensees are not trained or licensed to provide tax advice.

**For Additional Information, Visit:**

Oregon Real Estate Agency: <http://www.rea.state.or.us/>

Oregon State Government: <http://www.oregon.gov/>

Association of Oregon Counties: <http://www.aocweb.org>

League of Oregon Cities: <http://www.orcities.org>

Oregon Association of REALTORS®: <http://www.OregonRealtors.org>